

CEI Files Opening Brief against “Vapes on a Plane” Regulation

WASHINGTON - August 8, 2016 - The Competitive Enterprise Institute (CEI) and the Consumer Advocates for Smoke-free Alternatives Association (CASAA) filed the opening brief today in their lawsuit challenging a U.S. Department of Transportation (DOT) regulation that bans the use of electronic cigarettes (e-cigarettes) on planes.

The brief alleges DOT improperly banned the use of e-cigarettes under Congress’s anti-smoking airline statute. DOT’s expansion of the law is illegal, because e-cigarettes neither burn tobacco nor produce smoke, a fact DOT itself admitted in 2011. The Department also fails to provide any evidence of actual harm to passenger health and comfort to support its ban under the “unfair and deceptive” and “safe and adequate” statutes that apply to airline conduct.

“Congress made clear that its anti-smoking ban applies to combusted tobacco products and smoke, neither of which have anything to do with the use of e-cigarettes,” said CEI Fellow [Marc Scribner](#). “The DOT’s attempt to illegally rewrite the law poses a far greater danger to the traveling public than e-cigarette vapor.”

Julie Woessner, Executive Director of the 195,000-member [CASAA](#) organization, stated: “Airlines should be free to make their own policies regarding the use of e-cigarettes on their aircraft. But DOT’s efforts to impose an across-the-board ban by redefining “smoking” to include smoke-free e-cigarettes has no basis in either law or fact, and has nothing to do with passenger welfare. Rather, it is about pushing an anti-vaping political agenda and expanding agency power.”

The brief filed today in the U.S. Court of Appeals for the District of Columbia will be followed by a reply brief from the DOT by Sept. 7.

Background:

In 1989, Congress authorized DOT to issue rules banning in-flight smoking. But, as DOT itself admitted when it first proposed to ban in-flight e-cigarette use over four years ago, electronic cigarettes involve neither combustion nor smoke.

Until the final rule, published in early March 2016, airlines were free to voluntarily prohibit vaping aboard their aircraft, and most did. In CEI’s view, the airlines’ ban means that DOT’s rule is not only illegal but unnecessary.

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